

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On October 17, 2019 appellant, then a 73-year-old physician, filed an occupational disease claim (Form CA-2) alleging that he developed low back pain radiating into his leg due to factors of federal employment, including prolonged working at his desk. He noted that the pain began two weeks earlier and increased in intensity on October 17, 2019. Appellant indicated that he first became aware of his condition on October 1, 2019, and realized its relationship to his federal employment on October 15, 2019. He did not stop work.

In an attached statement, appellant explained that he had a history of low back, right buttock and leg pain related to prolonged sitting at his desk for five to six hours per day, which became more intense in October 2019. He noted that he had not suffered a similar condition in the past.

On October 15, 2019 appellant was treated by Dr. Howard K. Chey, a Board-certified physiatrist and employing establishment physician, for right buttock and right leg pain radiating into the right posterolateral thigh and calf that began on October 11, 2019. He reported that the pain began while he was sitting in his office chair and he has since been unable to get into a comfortable position. Findings on examination revealed an antalgic gait and positive straight leg raise testing on the right side. Dr. Chey diagnosed right-sided sciatica and prescribed medication for pain. He advised that appellant continue with current work duties.

In a report of even date, Santhi M. Jaison, a registered nurse, indicated that appellant was treated for right leg pain radiating into the lower thigh and calf, which began on October 11, 2019. Appellant reported that he was unable to sit, stand, or walk, making it difficult to work.

In an October 22, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. It did not receive a response.

By decision dated November 22, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the

³ 5 U.S.C. § 8101 *et seq.*

United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted factors of his federal employment.

In a report dated October 15, 2019, Dr. Chey noted that appellant reported that he had an onset of pain in his lower back radiating into his right buttock, thigh and leg beginning on October 11, 2019, while he was sitting in his office chair. On physical examination he noted an antalgic gait and positive straight leg raise testing on the right side and diagnosed sciatica. However, Dr. Chey did not provide an opinion on the cause of appellant's condition. Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability

⁴ *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ See *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

is of no probative value on the issue of causal relationship.¹⁰ As he did not address causal relationship, his report is insufficient to meet appellant's burden of proof.¹¹

Appellant submitted a report from Ms. Jaison, a registered nurse. However, certain healthcare providers such as physician assistants, nurses, physical therapists, and social workers are not considered physician as defined under FECA.¹² Consequently, these reports do not constitute competent medical evidence.¹³

As appellant has not submitted rationalized medical evidence explaining causal relationship between his diagnosed medical conditions and the accepted factors of his federal employment, the Board finds that he has not met his burden of proof.

On appeal appellant asserts that he submitted sufficient evidence to establish that he developed an occupational disease causally related to employment factors. However, as noted above, he has not provided a pathophysiological explanation as to how the accepted incident either caused or contributed to his diagnosed conditions of the accepted factors of his federal employment. Thus appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted factors of his federal employment.

¹⁰ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *T.R.*, Docket No. 18-1272 (issued February 15, 2019).

¹² Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *B.B.*, Docket No. 09-1858 (issued April 16, 2010) (nurse's reports are of no probative medical value as nurses are not physicians under the FECA).

¹³ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board